

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

X scan

FURUKAWA ELECTRIC NORTH AMERICA;
INC., and OFS FITEL LLC,

Plaintiffs,

vs.

ANTARES DEVELOPMENT INTERNATIONAL
LLC,

Defendants.

Civil Action No. 05-cv-11665-RGS

**JOINT MOTION FOR RELIEF FROM SCHEDULING DEADLINES SET FORTH IN
THE COURT'S APRIL 26, 2007 ORDER SETTING CIVIL CASE FOR JURY TRIAL**

Plaintiffs Furukawa Electric North America, Inc. and OFS Fitel Inc. (collectively, "OFS") and Defendant Antares Development International ("Antares") hereby jointly move the Court for relief from the schedule set forth in the Court's April 26, 2007 Order Setting Civil Case for Jury Trial (the "Order").

The parties have agreed in principal to settle this matter and are in the process of finalizing the terms of a settlement agreement. The contemplated settlement involves intricate agreements between OFS and Yangtze Optical Fibre Company Ltd. ("YOFC" - whose allegedly infringing products are allegedly sold by defendant Antares) with respect to OFS and YOFC's business dealings around the world. As a result of this complexity, and of the logistical difficulties presented by having parties located in China and the United States, the negotiation and finalization of the definitive settlement agreements have taken longer than expected.

The parties, therefore, respectfully request that the Court either: (1) vacate the April 26, 2007 Order and grant the parties an additional sixty (60) days to reach a settlement before imposing a further schedule; or (2) issue another Settlement Order of Dismissal, dismissing the case without costs and without prejudice, and allowing the parties to restore the action to the docket within sixty (60) days if settlement is not consummated. In further support of this Joint Motion, the parties state:

I. BACKGROUND

1. Plaintiff OFS is an optical fiber manufacturer headquartered in Norcross, Georgia. OFS holds a number of patents to optical fiber products and the methods for manufacturing them.

2. YOFC is the Defendant in a related litigation captioned *Furukawa Electric Company of North America, et al. v. Yangtze Optical Fibre and Cable Company Ltd.*, Civil Action No. 05-cv-11219-RGS. YOFC is headquartered in China.

3. Plaintiffs allege that defendant Antares is in the business of selling and/or offering for sale optical fiber products manufactured by YOFC. Antares is headquartered in Massachusetts.

4. On June 10, 2005, OFS filed an action for patent infringement (05-cv-11219) against YOFC (the "YOFC Action").

5. On August 11, 2005, OFS filed its Complaint against Antares (05-cv-11665) (the "Antares Action"). Service on Antares was made soon thereafter.

6. Service on YOFC was accomplished in China.

7. After the initial scheduling conference in the Antares Action, on February 6, 2006; the Court issued a scheduling order that called for, among other things, a status conference to be held on August 10, 2006.

8. At the request of counsel for the parties, to permit the parties to continue ongoing settlement negotiations, the Court subsequently cancelled that status conference.

9. Likewise, at the parties' request, the Court continued the initial scheduling conference in the YOFC Action while the parties attempted to negotiate settlement.

10. On February 21, 2007, the Court issued a Settlement Order of Dismissal in both actions, allowing the parties to restore the actions to the docket within sixty (60) days if settlement was not completed.

11. Despite their good faith efforts, the parties were unable to finalize their settlement within sixty (60) days. Therefore, on April 24, 2007, OFS, with the defendant's assent, requested that the action be restored to the docket. The next day, the Court granted OFS's request and issued the Order.

12. The Court's Order sets a deadline of May 21, 2007 for submission of all trial briefs, with trial to be held on June 4, 2007.¹

13. The matter is not ready for trial, as the parties have focused their efforts on reaching a negotiated resolution to this dispute.

14. As of this date, these efforts have been largely successful and the parties have agreed in principle to settle this case.

¹ The schedule set by the Court is substantially more aggressive than that set forth in the parties' Joint Statement and Discovery Plan Pursuant to Local Rule 16.1, which suggested the date for dispositive motions to be filed be set at January 14, 2008.

15. The contemplated settlement agreement is complicated. Generally it provides for OFS and YOFC to enter into a series of interrelated licenses and product supply and distribution agreements in various jurisdictions across the world.

16. Because of the complexity of the terms of the contemplated settlement, and because of the logistical difficulties in conducting negotiations between China and the United States, the parties have not yet finalized the settlement and related agreements.

17. The parties continue to make every effort to resolve the remaining issues and finalize the settlement documents. The parties expect that, if granted an additional sixty (60) days to finalize this settlement, an agreement will be executed within that time.

18. The parties are cognizant of and share the Court's desire to have this matter concluded expeditiously, either by a finalized settlement or by litigation on the merits.

19. Given the advanced status of settlement negotiations, it would be a waste of both the Court's and the parties' resources to prepare for trial of the matter at this time.

20. Moreover, as the parties have been focused on the negotiated resolutions of this matter, it would be near impossible for them to exchange the necessary discovery and conduct the other preparation necessary to meet the current schedule established by the Court's Order.

WHEREFORE; the Parties jointly request that the Court: (1) grant them relief from the schedule set forth in the Court's April 26, 2007 Procedural Order, and either:

- a) vacate its prior scheduling order and grant the parties an additional sixty (60) days to reach a settlement before establishing a schedule to resolve the matter on the merits; or

- b) issue another Settlement Order of Dismissal, dismissing the case without costs and without prejudice, and allowing the parties to restore the action to the docket within sixty (60) days if settlement is not consummated.

**FURUKAWA ELECTRIC NORTH
AMERICA, INC.; and OFS FITEL LLC**

**ANTARES DEVELOPMENT
INTERNATIONAL, LLC**

By their attorneys,

By its attorneys,

/s/ CARLOS PEREZ-ALBUERNE

Sarah Chapin Columbia (BBO # 550155)
scolumbia@choate.com
Carlos Perez-Albuerne (BBO # 640446)
cperez@choate.com
CHOATE, HALL & STEWART LLP
Two International Place
Boston, Massachusetts 02110
(617) 248-5000 (phone)
(617) 248-4000 (fax)

/s/ RICHARD S. SANDERS

Richard S. Sanders (BBO # 562014)
rsanders@sandw.com
Samual A. Miller (BBO # 648568)
smiller@sandw.com
Joshua L. Solomon (BBO # 657761)
jsolomon@sandw.com
SULLIVAN & WORCESTER LLP
One Post Office Square
Boston, MA 02109
(617) 338-2800 (phone)
(617) 338-2880 (fax)

Dated: May 17, 2007